

### **REMARKS/ARGUMENTS**

Reconsideration is respectfully requested in view of the remarks and amendments presented herein.

#### **Status of the Claims**

Claims 1-11, 14-17, 23-25, 27-32, and 34-43 are pending in this application. Claims 5-7, 15-17, 24, 25, 28, 29, 31, 32, and 34 have been previously withdrawn from consideration by the Examiner.

#### **Discussion of the Claim Amendments**

The claims have been amended to more particularly point out and distinctly claim the subject matter of the present invention. In particular, independent claims 1 and 43 have been amended to recite that the band is a tubular member. Moreover, independent claim 1 has been amended to recite that the mesh is a colored mesh and to recite that the color of the band contrasts with the color of the mesh. Claims 23, 30, and 39 have been amended to depend from claim 1 as presented herein. Support for the amendments to the claims may be found in the application as originally filed at page 5, lines 14-18. No new matter has been added by way of the amendments to the claims.

#### **Response to the Rejection under 35 U.S.C. §103 in view of Strecker and Chevalier**

The Examiner has rejected claims 1-4, 8, 12-14, 23, 26, 27, 30, 33, 35, and 39-43 under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent No. 5,653,748 to Strecker (hereinafter "Strecker") in view of U.S. Patent No. 5,401,257 to Chevalier Jr. et al. (hereinafter "Chevalier"). Reconsideration is respectfully requested in view of the amendments and remarks herein.

To advance prosecution and not in acquiescence of the rejection, independent claims 1 and 43 have been amended to recite that the band is a tubular member. Moreover, claim 1 has been amended to recite that the mesh is colored and that the color of the band contrasts with the color of the mesh.

Strecker fails to disclose or suggest an apparatus as recited in amended claims 1 and 43 which includes a visual marker in the form of a band which is a tubular member. Indeed, Strecker fails to disclose an apparatus as recited in amended claim 1 which includes a colored mesh, where the color of the band contrasts with the color of the mesh.

Chevalier does not overcome the deficiencies of Strecker. Significantly, Chevalier does not disclose or suggest a visual marker which is a tubular member. Rather, the “markings” of Chevalier are created using a laser. In particular, Chevalier teaches that “[t]hese markings, as well as others that indicate the size, length and manufacturer of the stent, can be placed on the stent using a laser scribing system” and that “[t]he markings are also relieved into the surface of the tube.” *See* column 7, lines 58-61, and column 8, lines 17-18, of Chevalier. As such, the marking of Chevalier is not a tubular member. Nor is there any disclosure in Chevalier that its laser markings are capable of being freed from the tube on which they are placed. Rather, Chevalier expressly states that the “markings are retained even after the stent has been within the body for an extended period of time.” *See* column 8, lines 35-37, of Chevalier.

Thus, Strecker and Chevalier fail to disclose or suggest each and every feature of amended independent claims 1 and 43. Accordingly, Applicants respectfully submit that amended claims 1 and 43 are not obvious in view of Strecker and Chevalier.

Claims 2-4, 8, 14, 23, 27, 30, 35, and 39-42 as presented herein all depend either directly or indirectly from amended claim 1. Accordingly, Applicants respectfully submit that claims 2-4, 8, 14, 23, 27, 30, 35, and 39-42 are not obvious in view of Strecker and Chevalier for the same

reasons discussed above with respect to amended claim 1. Indeed, there is no disclosure or suggestion in Strecker and Chevalier of the subject matter of claims 2-4, 8, 14, 23, 27, 30, 35, and 39-42 as presented herein.

Claims 12-13, 26, and 33 have been previously cancelled. Accordingly, their rejection in the Office Action is improper.

In view of the foregoing, withdrawal of the rejection under 35 U.S.C. §103(a) of claims 1-4, 8, 12-14, 23, 26, 27, 30, 33, 35, and 39-43 in view of Strecker and Chevalier is respectfully requested.

**Response to the Rejection under 35 U.S.C. §103 in view of Strecker, Chevalier, and Ravenscroft**

Claims 9-11 stand rejected under 35 U.S.C. §103 as allegedly being unpatentable over Strecker, Chevalier, and U.S. Patent No. 5,480,423 to Ravenscroft (hereinafter "Ravenscroft"). Reconsideration is respectfully requested in view of the amendments and remarks herein.

To advance prosecution and not in acquiescence of the rejection, independent claim 1 has been amended. For at least the reasons mentioned above, Strecker and Chevalier fail to disclose or suggest all of the features of independent claim 1 as amended.

The Examiner has cited Ravenscroft for a disclosure of "a length shortening self-expanding stent." See Office Action, page 3, fourth full paragraph. Ravenscroft, however, fails to cure the deficiencies of Strecker and Chevalier. Indeed, Ravenscroft fails to disclose or suggest all of the features of amended claim 1.

Accordingly, independent claim 1 as amended is not obvious in view of Strecker, Chevalier, and Ravenscroft. Claims 9-11 depend either directly or indirectly from amended claim 1 and also are not obvious in view of Strecker, Chevalier, and Ravenscroft.

In view of the foregoing, reconsideration and withdrawal of the rejection under 35 U.S.C. §103(a) in view of Strecker, Chevalier, and Ravenscroft with respect to claims 9-11 are respectfully requested.

**Response to the Rejection under 35 U.S.C. §103 in view of Strecker, Chevalier, and Fischell**

Claims 36-38 stand rejected under 35 U.S.C. §103 as allegedly being unpatentable over Strecker as modified by Chevalier as applied to claims 1-4, 8, 12-14, 23, 26, 27, 30, 33, and 35 in view of U.S. Patent No. 5,792,144 to Fischell et al. (hereinafter "Fischell"). Reconsideration is respectfully requested in view of the amendments and remarks herein.

To advance prosecution and not in acquiescence of the rejection, independent claim 1 has been amended. For at least the reasons mentioned above, Strecker and Chevalier fail to disclose or suggest all of the features of amended independent claim 1.

The Examiner has relied on Fischell for a disclosure of a stent-delivery catheter including bands of a radiopaque metal coated in silicone. Fischell, however, fails to disclose or suggest all of the features of amended independent claim 1. Accordingly, Fischell fails to overcome the deficiencies of Strecker and Chevalier with respect to amended independent claim 1.

Accordingly, amended independent claim 1 is not obvious in view of Strecker, Chevalier, and Fischell. As presented herein, claims 36-38 all depend directly or indirectly from amended claim 1 and also are not obvious in view of Strecker, Chevalier, and Fischell.

In view of the foregoing, reconsideration and withdrawal of the rejection under 35 U.S.C. §103(a) of claims 36-38 in view of Strecker, Chevalier, and Fischell are respectfully requested.

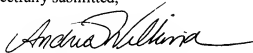
**Concluding Remarks**

This application is believed to be in condition for allowance. Favorable action thereon is therefore respectfully solicited.

Should the Examiner have any questions or comments concerning the above, the Examiner is respectfully invited to contact the undersigned at the telephone number given below.

No fees are believed to be due. However, the Examiner is authorized to charge any claim fees which are due to Deposit Account No. 08-2461. Moreover, the Commissioner is hereby authorized to charge payment of any additional fees associated with this communication, or credit any overpayment, to Deposit Account No. 08-2461. Such authorization includes authorization to charge fees for extensions of time, if any, under 37 C.F.R. § 1.17 and also should be treated as a constructive petition for an extension of time in this submission or any future submission pursuant to 37 C.F.R. § 1.136.

Respectfully submitted,



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